

DECLARATION OF MINA I. HAMILTON

I, Mina I. Hamilton, declare as follows:

1. I am a partner with the law firm of Lewis Brisbois Bisgaard & Smith LLP and I have personal knowledge of the contents set forth herein, and if called as a witness to testify thereto, I could competently and truthfully do so.

The Ninth Circuit's July 28, 2011 Ruling

2. Attached hereto as **Exhibit A** is a true and correct copy of the Ninth Circuit's July 28, 2011 Ruling in *TrafficSchool.com, Inc. v. Edriver, Inc., et al.*, Ninth Cir. Docket Nos. 08-56518, 08-56588 and 09-55333.

September 1, 2011 Meet and Confer

3. On September 1, 2011, the parties telephonically met and conferred to discuss the joint status report concerning the permanent injunction pursuant to this Court's Order (Docket No. 302). My partners, Mr. David N. Makous and Daniel C. DeCarlo, and associate, Josephine A. Brosas, attended the conference on behalf of Plaintiffs and Mr. Andrew Serwin and Ms. Tammy Boggs attended on behalf of Defendants. Client representatives were also present during the call. Attached hereto as **Exhibit B** is a true and correct copy of an email thread between me and Defendants' counsel, Mr. Andrew Serwin, regarding scheduling of this meet and confer. In this email, I also noted that "because your clients are in litigation, we expect that all present and prior versions of the splash screen and all webpages are being preserved, including but not limited to, all consumer and other emails, facebook pages/comments, etc."

4. During the meet and confer, Mr. DeCarlo and I asked Mr. Serwin several times whether he had any facts and/or evidence showing the level of consumer confusion, including whether such confusion has dissipated or increased since the splash screen was implemented. Mr. Serwin was unwilling to make any representations and refused to answer our queries. We expressed that Defendants are in possession of most of the evidence showing whether there has been continuing consumer confusion, and that Defendants are in a better position to describe the changes in Defendants'

1 marketing practices and how they have lessened or increased the level of confusion.
 2 Defendants suggested that they would be proposing the elimination of the splash screen
 3 in light of their recent design of disclaimers as currently displayed on DMV.org.
 4 Towards the conclusion of the meet and confer, Mr. Serwin, however, did agree to
 5 work towards a discovery plan and invited a list of proposed discovery from Plaintiffs.
 6 Attached hereto as **Exhibit C** is a true and correct copy of my September 2, 2011 letter
 7 to Mr. Serwin confirming what was discussed and following up with a list of proposed
 8 discovery in order to address the Ninth Circuit's concerns. Attached hereto as **Exhibit**
 9 **C-1** is a true and correct copy of an email I received from Mr. Serwin on September 5,
 10 2011.

11 5. Attached hereto as **Exhibit D** is a true and correct copy of Mr. Serwin's
 12 letter dated September 6, 2011 in response to my September 2, 2011 letter.

13 6. Attached hereto as **Exhibit E** is a true and correct copy of my September 6
 14 email in response to Mr. Serwin's letter of the same day.

15 **Various Iterations of the DMV.ORG Splash Screen**

16 7. Attached hereto as **Exhibit F** is a true and correct copy of a print out of the
 17 DMV.ORG splash screen as it appeared on or about March 23, 2009. As can be seen in
 18 this print out, there are two drop down menus on the screen. These drop down menus
 19 appeared while the page was loading and then disappeared once the page fully loaded in
 20 the web browser.

21 8. Attached hereto as **Exhibit G** is a true and correct copy of a screen shot of
 22 the DMV.ORG splash screen as it appeared on or about August 25, 2009.

23 9. Attached hereto as **Exhibit H** is a true and correct copy of a screen shot of
 24 the DMV.ORG splash screen as it appeared on or about August 26, 2009.

25 10. Attached hereto as **Exhibit I** is a true and correct copy of a screen shot of
 26 the DMV.ORG splash screen as it appeared on or about July 28, 2011. Defendants
 27 have removed "Unofficial Guide to the DMV" from their license plate logo.
 28 Additionally, there was a delay of approximately two (2) seconds before the disclaimer

1 text (in faint grey font) appeared right below the browser toolbar.

2 11. Attached hereto as **Exhibit J** is a true and correct copy of a screen shot of
3 the DMV.ORG splash screen as it appeared on or about August 29, 2011. Again, there
4 was a delay of approximately two (2) seconds before the disclaimer text (in faint grey
5 font) appeared right below the browser toolbar.

6 **Google.com Search Results**

7 12. Attached hereto as **Exhibit K** is a true and correct copy of a print out
8 showing the Google search results when “DMV” is searched. As can be seen,
9 Defendants’ website, DMV.ORG, appears as the sixth website in the organic search
10 results, right after the *official* websites of the California, Virginia, New York, and
11 Nevada Department of Motor Vehicles (“DMV”).

12 13. Attached hereto as **Exhibit L** is a true and correct copy of a screen shot
13 showing the Google search results when “DMV approved traffic school” is searched.
14 As can be seen, Defendants’ website DMV.ORG appears as the second website in the
15 organic search results, right after the California DMV website (www.dmv.ca.gov).

16 14. Attached hereto as **Exhibit M** is a true and correct copy of a screen shot
17 showing the Google search results when “DMV traffic ticket information” is searched.
18 As can be seen, Defendants’ website DMV.ORG appears as the first website in the
19 organic results list.

20 **DMV.ORG’s Facebook Page, User/Consumer Comments and Deletion Thereof by** 21 **Defendants**

22 15. Attached hereto as **Exhibit N** is a true and correct copy of a print out of
23 DMV.ORG’s Facebook Home Page as it appeared on or about August 31, 2011.

24 16. Attached hereto as **Exhibit O** is a true and correct copy of a print out of
25 DMV.ORG’s Facebook “Wall” as it appeared on or about August 31, 2011 which
26 shows the various user comments to DMV.ORG.

27 17. Attached hereto as **Exhibit P** is a true and correct copy of a print out of a
28 DMV.ORG’s Facebook “Wall” on or about September 1, 2011 which shows that some

1 of the user comments appearing on the August 31 print out have been deleted. For
 2 example, on page 2, comments from users “Aisa Choi” and “Clinton Kirk” have been
 3 deleted; on page 3, comments from users “Cris Melo,” “Willie Murphy,” “Michelle
 4 Cosmi Fern,” “Hope Norwood” and “Mr. Impatient” have been deleted.

5 18. Attached hereto as **Exhibit P-1** is a true and correct copy of a print out of
 6 another one of DMV.ORG’s Facebook pages called “DMV.ORG Practice Tests” which
 7 was printed on or about September 2, 2011. As can be seen from this print out, there
 8 appears to be no disclaimer text anywhere on this page.

9 19. Attached hereto as **Exhibit Q** is a true and correct copy of an email I sent
 10 to Mr. Serwin on September 1, 2011 regarding deletion of Facebook comments and
 11 spoliation.

12 20. Mr. Serwin has since confirmed that Defendants have indeed been deleting
 13 Facebook comments (including “complaints that were apparently addressed to a
 14 Department of Motor Vehicles”, see September 6, 2011 letter attached as Exhibit D
 15 hereto) and appear to have made no efforts to preserve the evidence that Defendants
 16 removed from Facebook. Attached hereto as **Exhibit R** is a true and correct copy of an
 17 email exchange between me and Mr. Serwin dated September 6, 2011 regarding this
 18 deletion and spoliation.

19 **DMV.ORG’s “Website Support” Page Directing Consumers to “DMV Office”**
 20 **“Online Services”**

21 21. Attached hereto as **Exhibit S** is a true and correct copy of a screen shot of
 22 DMV.ORG’s “Contact DMV.ORG Website Support” page dated on or about August 4,
 23 2011. In this page, DMV.ORG directs the consumer as follows: “Disclaimer:
 24 DMV.org is a privately-owned website and NOT owned by any government agency.
 25 For License or Registration Issues, please contact your state DMV office: >>
 26 <http://local.dmv.org>.”

27 22. When the above link is clicked, the consumer is directed to a web page
 28 containing the text “DMV Office Locations” which prompts the consumer to enter a

1 ZIP code under “What’s your location?” Attached hereto as **Exhibit T** is a true and
2 correct copy of a screen shot of this web page.

3 23. Attached hereto as **Exhibit U** is a true and correct copy of a screen shot of
4 the above page, with a (sample) zip code “91105” [Pasadena zip code] entered in the
5 “What’s your location?” tool bar.

6 24. After the zip code has been entered, the consumer is then directed to a web
7 page containing a list of various DMV offices based on the entered zip code. This list
8 is hyperlinked, which means that when the text is clicked, it directs the consumer to
9 another web page. Attached hereto as **Exhibit V** is a true and correct copy of a screen
10 shot after the zip code “91105” has been entered, with a list of various DMV offices.

11 25. After the consumer clicks on the “Pasadena DMV Office” link in the list
12 of DMV offices, the consumer is then directed to a web page which reads: “Pasadena
13 DMV Office of Pasadena, California” and has a menu of “Online Services.” Among
14 the services listed under “Online Services” are: Auto Insurance Quotes, Practice Permit
15 Tests, Title Transfers, Motorcycle Registration, Registration Renewal *and Traffic*
16 *School*. Attached hereto as **Exhibit W** is a true and correct copy of a screen shot
17 showing this list of “Online Services.”

18 26. Attached hereto as **Exhibit X** is a true and correct copy of a screen shot
19 showing the web page that the consumer is directed to after he or she clicks on the
20 DMV.ORG’s “traffic school” link under “DMV Office of Pasadena, California”
21 “Online Services.” As can be seen, the consumer is directed to DMV.ORG’s “Featured
22 California Traffic School Sponsors” (in this case, I was directed to “I Drive Safely,”
23 which DMV.ORG represents as an “Approved California Traffic School”).

24 27. When “Registration Renewal” under “Online Services” are clicked, the
25 consumer is then directed to DMV.ORG’s web page, “Registration Renewal in
26 California” which prompts the user to enter his or her license plate number, VIN
27 number, and zip code. This “Registration Renewal” appears to be provided by
28 “Cartagz Vehicle Registration” services. Attached hereto as **Exhibit X-1** is a true and

1 correct copy of a screen shot on or about September 6, 2011 showing this “Registration
2 Renewal” web page.

3 **DMV.ORG on United States.Org**

4 28. Attached hereto as **Exhibit X-2** is a true and correct copy of a screen shot
5 taken on or about August 4, 2011 of the website www.unitedstates.org showing the link
6 to DMV.ORG on the right hand side of the page under “Top Picks” before the links to
7 various government websites.

8 **DMV.ORG’s “Splash Screen” as it Appears on Portable Devices Such as Ipads**
9 **and Iphones**

10 29. I own an Apple Ipad. In the last week or so, I have accessed the
11 DMV.ORG website on my Ipad on multiple occasions. Each time that I have accessed
12 the DMV.ORG website through my Ipad, the content of the DMV.ORG website was
13 fully viewable and accessible when scrolling down from the splash page, even before
14 clicking on the “continue” button.

15 30. In addition to checking my own Ipad, I also checked Iphones of my
16 colleagues. Similarly, when I accessed the DMV.ORG website through these Iphones,
17 the content of the DMV.ORG website was fully viewable and accessible when scrolling
18 down from the splash page, even before clicking on the “continue” button.

19 **Web Blogs on the July 28, 2011 Ninth Circuit Opinion**

20 31. Attached hereto as **Exhibit Y** is a true and correct copy of a print out of a
21 blog entry dated August 2, 2011 from “Rebecca Tushnet’s 43(B)log” regarding the
22 Ninth Circuit’s July 28, 2011 Opinion.

23 32. Attached hereto as **Exhibit Z** is a true and correct copy of a blog entry
24 from the blog “California Appellate Report” dated July 28, 2011 regarding the Ninth
25 Circuit’s July 28, 2011 Opinion.

26 **FTC Guidelines**

27 33. Attached hereto as **Exhibit AA** is a true and correct copy of the Federal
28 Trade Commission’s (FTC) Guidelines for online disclosures which I printed from the

1 FTC's website www.ftc.gov.

2 **Declarations Previously Submitted by Defendants**

3 34. Attached hereto as **Exhibit BB** is a true and correct copy of pertinent
4 portions of the Declaration of Bruce Tognazzini which Defendants filed on June 18,
5 2008 in support of their objection to the Proposed Judgment and Permanent Injunction.
6 (Docket Entry #212-2.)

7 35. Attached hereto as **Exhibit CC** is a true and correct copy of pertinent
8 portions of the Declaration of David Gray which Defendants filed on January 1, 2009 in
9 support of their Opposition to Plaintiffs' Motion for Contempt. (Docket Entry #282).

10 **Court's Order re: Contempt**

11 36. Attached hereto as **Exhibit DD** is a true and correct copy of the Court's In
12 Chambers Order regarding Plaintiffs' motion for contempt. (Docket Entry # 290).

13 **New Visitors to DMV.org**

14 37. According to a 2003 DMV study, there are approximately 20,000 new
15 provisional licenses issues monthly. This includes all drivers under the age of 18.
16 See, [http://dmv.ca.gov/about/profile/rd/r_d_report/Section%201/205-](http://dmv.ca.gov/about/profile/rd/r_d_report/Section%201/205-GDL%20Report.pdf)
17 [GDL%20Report.pdf](http://dmv.ca.gov/about/profile/rd/r_d_report/Section%201/205-GDL%20Report.pdf).

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38. According to the US DOT, FHA (United States Department of Transportation, Federal Highway Administration) report for 2009, there were 236,358 licensed drivers aged 16 & 17 in CA. The average age according to the CA DMV study noted above for a provisional license being issued is 16 ½. The same report showed there were 3,836,929 licensed drivers aged <16, 16, 17 in the entire United States. See, <http://www.fhwa.dot.gov/policyinformation/statistics/2009/dl22.cfm>.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this Declaration was executed on September 6, 2011, at Los Angeles, California.

/s/ Mina I. Hamilton
Mina I. Hamilton